

**REMARKS/ARGUMENTS**

This Amendment is in response to the Office Action of June 11, 2009, in which the Examiner (1) rejected claims 1, 3-4, 13-14 and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,143,428 to Bruck et al. (“**Bruck**”) in view of U.S. Patent No. 6,754,904 B1 to Cooper et al. (“**Cooper**”) and further in view of U.S. Patent Application Publication No. 2002/0178441 to Hashimoto (“**Hashimoto**”); (2) rejected claims 9-10, 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over **Bruck, Cooper** and **Hashimoto** in view of U.S. Patent No. 4,953,159 to Hayden (“**Hayden**”) and (3) rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over **Bruck, Cooper** and **Hashimoto** in view of U.S. Patent No. 6,757,365 to Bogard (“**Bogard**”).

By the present Amendment, claim 1 has been amended to emphasize the novel features and the purpose of the present invention.

As is believed clear from the claims, from the Specification, and from the previous Amendments by Applicant, the present invention has as its purpose the tracking and reporting of data relating to video programming activity by capturing IM content and profile information from an IM server, storing and aggregating that data at a separate survey server, and then generating reports from the aggregated data in order to track programming activity by multiple users. Because of the novel use of IM content, the reports not only include the programs being watched by the user, but also other data relating to programming activity obtained from IM content and user profile data. As explained the Specification (paragraphs 0058-0060), use of IM content (rather than merely video programming activity as in prior systems) provides a much broader array of instantaneous, related activity data to be captured about the video programming, such as keywords in IM messages, telephone calls being made by IM users watching the video programming, the number of IM users chatting while watching the video program, favorable and unfavorable comments in IM messages, as well as personal profile data associated with the users that have all previously been captured at the IM server (and thus do not have to be separately entered or generated as part of monitoring programming activity).

**Bruck**, the principal reference, discloses a chat server 99 and a user interface 110 for users to view both a television program at video region 118 and chat transcript concerning that program at a chat region 108.

**Cooper** discloses a system permitting users to simultaneously view a television program display 900 and a chat room display (Fig. 9; col. 6, lines 19-39). **Cooper** also discloses a set-top box display that includes a TV program 1102 and an enhanced buddy list 1110, with the buddy list including the TV show or network being viewed by each buddy (Fig. 11; col. 7, lines 4-13).

In the Office Action, the Examiner correctly states that **Bruck** and **Cooper** do not teach a separate survey server for performing the purpose of the invention, namely communicating with the IM server for receiving and storing IM content, and aggregating that content in order to track the programming activity of multiple users viewing television programs, so that the programming activity can be tracked on a real time basis and reported on, along with personal information from the users provided from the IM server.

In order to overcome the shortcomings of **Bruck** and **Cooper**, the Examiner now combines **Bruck** and **Cooper** with **Hashimoto**. **Hashimoto** discloses a rating survey system having a survey server 10 that monitors user/client terminals 50 to determine the user IDs and program IDs for programs being viewed or listened to at the terminals 50 (paragraph 0026). **Hashimoto** further discloses that the user terminal can be used for collecting demographic information, entered at the user terminal pursuant to programs and data transmitted to the terminal by the survey server (paragraph 0046).

**Hashimoto**, even as combined with **Bruck** and **Cooper**, fails to meet the purpose of the present invention, namely, the tracking of programming activity at a survey server without the survey server having to monitor and collect programming and personal data at the user device. As noted above, the present invention permits advantageous use of data generated during an IM session and data stored at an IM server, in order to track data on viewers and their reactions to a broadcast program, based on the IM messages being posted (and the program

identifiers associated with the IM messages, and the profile information already collected at the IM server). Thus, the information to be tracked is provided by the IM server. This has numerous advantages, such as taking advantage of data already generated and stored at the IM server, eliminating the need to monitor programming activity at the users' TVs or terminals, and eliminating the need for the survey server to load special survey programs and data at the user terminal to collect data as in **Hashimoto** (see paragraphs 0046 and 0062).

Neither **Bruck** nor **Cooper** are concerned with tacking and reporting programming activity, and neither has a separate survey server for such purpose. While **Hashimoto** has a survey server, there is no recognition or any suggestion that IM content can be used for tracking programming activity. Rather, the tracking is done by collecting user IDs and program IDs directly from the user terminal in accordance with data and programs downloaded to the terminal (paragraphs 0042 and 0062).

Even if one were to combine **Bruck**, **Cooper** and **Hashimoto** as proposed by the Examiner, one skilled in the art would not arrive at Applicant's novel invention. Rather, the combination would yield a display device or user terminal (that might be capable of running IM applications), client software and data loaded onto the terminal from a survey server for directly monitoring programming and for an collecting demographic data at the user terminal, with the monitoring and data collection done independently of the IM server. The survey server would not use (and there would be no reason to use) IM content to track and report on programming activity.

Applicant also respectfully submits that the Examiner not provided a proper basis for combining **Bruck**, **Cooper** and **Hashimoto** for purposes of teaching the present invention. Specifically, the Examiner states (see the bottom of page 6 and the top of page 7 of the Office Action) that it would be obvious "to modify a display system of Bruck and IM server of Cooper to include a survey server as taught by Hashimoto to perform [an] audience rating survey [that] can compile the number of viewers/listeners for each program, and include the extent of such things as what kind of people are viewing/listening to a certain program." Such a rationale fails to explain why one would be motivated to use already existing IM content and profile

information to track programming activity (as in Applicant's invention), rather than directly monitor programs at the user terminals and collect profile information entered as part of the operation of the survey system (as in **Hashimoto**).

Accordingly, even as combined, **Bruck**, **Cooper** and **Hashimoto** do not teach or suggest the following features recited in claim 1:

*“a separate survey server in communication with the IM server for receiving and storing instant messaging content from each of the users, the instant messaging content comprising IM messages sent among the users and a program ID associated with each of the sent IM messages, the program ID identifying the broadcast television program being viewed by each user, the survey server for aggregating IM content including program IDs from the users corresponding to the multiple television programs being viewed by the users, so that video programming activity by multiple users viewing television programs can be tracked on a real time basis at the server in order to reflect moment-by-moment the level of instant messaging activity corresponding to multiple television programs being viewed by the multiple users, and the survey server for generating reports on the tracked programming activity;*

*wherein personal profile information for the users is entered at a profile screen on the display device and is stored at the IM server, and wherein such personal profile information is provided from the IM server to the survey server, so that programming activity being tracked at the survey server can be associated with demographic information of the users collected from the personal profile information”* (emphasis added).

While claim 1 as previously presented is believed distinguishable, in order to advance prosecution Applicant has amended claim 1 to clarify aspects of the profile information. Thus claim 1 now recites that profile information is “stored at the IM server in conjunction with managing the IM content” and is collected “without the demographic information having to be separately entered by users apart from the IM application.” Such clarification further emphasizes the distinguishing features of the present invention.

Dependent claims 3, 4, 9, 10, 12-14, 17, 18, 21 and 22 are each dependent on parent claim 1 and are allowable for at least the same reasons stated above.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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